

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60775

FILE: B-182268

DATE: April 19, 1976

MATTER OF: Maintenance, Incorporated and Custom  
Janitorial Services

99046

## DIGEST:

Contract awarded using negotiating technique held improper in Nationwide Building Maintenance, Inc., 55 Comp. Gen. \_\_\_\_ B-184186, February 3, 1976, should be terminated where no performance has occurred under the contract and agency has alternate method of obtaining required services until appropriate procedures for procuring janitorial services are developed.

Maintenance, Incorporated (Maintenance), and Custom Janitorial Services (Custom), have protested the award of Contract GS-04B-16409 to Bonded Building Cleaners, Inc. (Bonded), by the General Services Administration (GSA), on November 10, 1975, under Request for Proposals (RFP) No. 4PBD-78. This solicitation had been the subject of a previous protest filed by Maintenance in September of 1974. A decision was issued in that protest on June 25, 1975, B-182268, 75-1 CPD 383 in which we determined that GSA's proposed cancellation of the solicitation was not warranted. Following the issuance of the decision GSA again proposed to cancel the solicitation. Both Maintenance and Bonded protested this proposed action on August 28, 1975 and September 4, 1975, respectively. GSA reconsidered its decision and opened negotiations on October 17, 1975. On November 10, 1975, award was made to Bonded. Subsequent to the award both Maintenance and Custom filed the instant protests. Maintenance also sought a temporary restraining order from the United States District Court for the Northern District of Alabama. No order was issued, but GSA, Maintenance and Bonded entered into an agreement whereby performance would not be undertaken under the contract but Bonded would perform the janitorial services on an interim month-to-month basis until the protest was resolved.

As the outset we must point out that in a recent protest involving a similar janitorial services procurement, we held that GSA's determination to negotiate janitorial services contracts in order to secure a higher level of services "was not rationally founded within the limits of existing law." Nationwide Building Maintenance, Inc., 55 Comp. Gen. \_\_\_\_, B-184186, February 3, 1976,

76-1 CPD 71. We also recognized in that decision the difficulties which GSA has been experiencing in administering these contracts. Because of these difficulties we felt that GSA should have time to study alternative solutions within the context of formal advertising. We, therefore, did not disturb the award but recommended that GSA not exercise any options for janitorial services requirements subsequent to June 1976 under any similar outstanding negotiated janitorial services contracts.

In a subsequent case, Three D Enterprises, Inc., B-185745, February 20, 1976, 76-1 CPD 17, we held that because the negotiated janitorial services contract had been awarded and because the rationale for negotiating was the same as that used in the Nationwide decision no useful purpose in terms of remedy would be served by considering the merits of the protest. We stated:

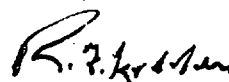
"This is so because if Three D's protest should be determined meritorious, any subsequent award under the subject RFP would be contrary to the Nationwide holding, and award under formal advertising procedures may not be feasible at this time as recognized in the Nationwide case. However, as was recognized in the cited case, no options under the subject contract should be exercised."

Both protests in this case challenge the propriety of GSA's action in scoring the proposals and in selecting the proposal most advantageous to the Government. We have held, however, as stated above, that the use of negotiation authority for this type of procurement is not justified. In this case, therefore, even if we found that GSA had conducted a proper evaluation of proposals we would still consider GSA's use of negotiating authority to be improper. Under the circumstances, we see no reason to render a decision on the merits of these protests.

As stated above, Bonded is not performing under the disputed contract (Contract GS-04B-16409) but rather GSA is obtaining its needs from Bonded by means of the interim contract. Under the circumstances, it would be appropriate to terminate contract GS-16409 at this time for the reasons stated in Nationwide Building Maintenance, Inc., 55 Comp. Gen. \_\_\_, B-184186, February 3, 1976, 76-1 CPD 71 and Nationwide Building Maintenance, Inc., B-184776,

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February 19, 1976, 76-1 CPD 113. In the meantime, while GSA is preparing alternate procedures for procuring these services, we have no objection to Bonded performing under the interim contract.

  
Deputy Comptroller General  
of the United States